

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

Approved as to Form

City Attorney

AMENDING THE ALAMEDA MUNICIPAL CODE BY ADDING SECTION 3-7 AT
ARTICLE I (FINANCE) OF CHAPTER III (FINANCE AND TAXATION)
REGULATING HOLDERS OF STATE VIDEO FRANCHISES

WHEREAS, the Digital Infrastructure and Video Competition Act of 2006 (the "Act") went into effect on January 1, 2007; and

WHEREAS, under the Act, the State of California, through the Public Utilities Commission, has the sole authority to issue statewide franchises, impose user and application fees and establish franchise fees; and

WHEREAS, under the Act, the City of Alameda has the authority to manage the rights of way, to regulate the payment of Public, Education, and Government ("PEG") fees, to require the provisions of PEG channels and to enforce federal and state customer service standards; and

WHEREAS, the City of Alameda desires to exercise that authority and to facilitate the implementation of the Act by setting forth regulations for the provision of video service by state franchise holders within the City.

BE IT ORDAINED by the City Council of Alameda that:

Section 1. The Alameda Municipal Code is hereby amended by adding a new Section 3-7 to Article I of Chapter III, which shall read as follows:

3-7 Regulation of State Video Franchise Holders.

3-7.1 Purpose and Authority.

This section is designed to regulate video service providers holding state video franchises and operating within the City of Alameda. This section is enacted pursuant to the authority provided in the Digital Infrastructure and Video Competition Act of 2006 (Public Utilities Code Section 5800 et seq.) as such legislation may hereafter be amended and supplemented by regulations published thereunder.

3-7.2 Definitions.

Unless the term is specifically defined in this section or the contrary is stated or clearly appears from the context, the definitions set forth in the Digital Infrastructure and Video Competition Act of 2006 (Public Utilities Code Section 5800 et seq.) shall govern the interpretation of this section.

3-7.3 State Video Franchise and PEG Fees.

- (a) Any state video franchise holder operating within the boundaries of the City of Alameda shall pay to the City a franchise fee equal to five percent (5%) of the gross revenues of that state video franchise holder.
- (b) Any state video franchise holder operating within the boundaries of the City shall pay to the City an additional fee equal to one percent (1%) of the gross revenues of that state video franchise holder, which fee shall be used by the City for any Public, Educational and/or Governmental (PEG) purposes consistent with state and federal law.
- (c) For purposes of subsections (a) and (b) above, the term "gross revenues" shall be defined as set forth in Public Utilities Code Section 5860.

3-7.4 Audit Authority.

Not more than once annually and in a manner consistent with Public Utilities Code Section 5860, the City may examine and perform an audit of the business records of the holder of a state video franchise to ensure compliance with subsection 3-7.3, above.

3-7.5 Customer Service Penalties.

- (a) The holder of a state video franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service.
- (b) The City shall monitor compliance by state video franchise holders with state and federal customer service and protection standards. The City shall provide to the state video franchise holder written notice of any material breaches of applicable customer service and protection standards, and shall allow the state video franchise holder thirty (30) days from receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period will be subject to the following monetary penalties to be imposed by the City in accordance with state law. For purposes of this subsection, "material breach" shall be defined as set forth in Public Utilities Code Section 5900.
 - (1) For the first occurrence of a violation, a monetary penalty of \$500 shall be imposed for each day the violation remains in effect, not to exceed \$1,500 for each violation.
 - (2) For a second violation of the same nature within twelve (12) months, a monetary penalty of \$1,000 shall be imposed for each day the violation remains in effect, not to exceed \$3,000 for each violation.
 - (3) For a third or further violation of the same nature within twelve (12) months, a monetary penalty of \$2,500 shall be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.

- (c) A state video franchise holder may appeal a monetary penalty assessed by the City within sixty (60) days by providing written notice to the City Manager. The City Manager or his or her designee shall appoint a hearing officer, who shall promptly hold an administrative hearing. After relevant evidence and testimony is received, the hearing officer shall either uphold, modify, or vacate the monetary penalty. The hearing officer's decision on the imposition of a monetary penalty shall be final.

3-7.6 City Response to State Franchise Applications.

Applicants for state video franchises within the boundaries of the City of Alameda must concurrently provide to the City complete copies of any application or amendments to applications filed with the California Public Utilities commission. One complete copy must be provided to the City Clerk. The City may provide any appropriate comments to the Commission regarding the application or amendment.

Section 2. This ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Section 3. Severability Clause. It is the declared intent of the City Council of Alameda that if any section, subsection, sentence, clause, phrase, or provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provisions of this ordinance.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

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I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by Council of the City of Alameda in regular meeting assembled on the _____ day of _____, 2011, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this _____ day of _____, 2011.

Lara Weisiger, City Clerk
City of Alameda